IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Criminal Application No.8555 of 2005

In

Criminal Application No.8554 of 2005

State of Maharashtra Applicant

Vs.

Amol Pralhad Hoval Respondent

Mrs.P.H.Kantharia, APP for State.

Mr.E.R.Naik for respondent.

Ms.Shraddha Mohite for org.complainant.

CORAM: B.H.MARLAPALLE & R.S. MOHITE, JJ.

March 08, 2007.

P.C.

. Heard Mrs.Kantharia, the learned APP and Mr.Naik the learned Advocate for the respondent - original accused. The State has filed Criminal Application No.8554 of 2005 praying for leave to appeal under Section 378(3) of Cr.P.C. against the order of acquittal under Section 302 of IPC passed by the learned Sessions Judge at Sangli on 18/7/2001.

. The learned Sessions Judge by the said order

dated 18/7/2001 convicted the accused for the offence punishable under Section 304 Part II of IPC and sentenced him to suffer RI for two years. He also noted that the accused was in detention since 27/9/2000 and thus he served the sentence and was released from jail on or before 27/9/2002. The original complainant filed Criminal Application No.1373 of 2003 on 3rd April 2003 i.e. much after the accused was released after undergoing the sentence. In the said application filed belatedly time was granted to the learned APP to take instructions with regard to filing of an appeal against the order of acquittal on 13/12/2005 and consequently Criminal Application No.8554 of 2005 came to be filed by the State on 27/12/2005 hence this application for condonation of delay.

. As per the office note the delay caused is of four years and 72 days. We have heard Mrs.Kantharia, the learned APP and Mr.Naik, the learned counsel for the accused and Ms.Shraddha Mohite, the learned counsel for the original complainant. We have noted that the incident had taken place on 26/9/2000 and in the same the accused Amol had allegedly assaulted Shantabai. She was hospitalised and while under

treatment she died on 14/10/2000 i.e. after about eighteen days from the date of incident. There is some evidence to believe that while under treatment she developed some complications, though her death found its origin in the injuries she had received on 26/9/2000. The learned Judge of the trial Court considered the obtaining circumstances and more particularly the fact that the recovery of the weapon (knife) at the instance of the accused was doubtful, more so when both the panch witnesses had turned hostile, and acquitted the accused of the charge punishable under Section 302 of IPC and held that the offence of the accused would fall in the category of Section 304 Part II of IPC.

. As noted earlier, by the time the revision was filed by the complainant, the accused was already released after undergoing the sentence and this application seeking leave to appeal under Section 378(3) of Cr.P.C. is filed after more than four years from the date of the acquittal order. The accused is present in the Court.

. Having regards to the totality of the circumstances, we are satisfied that no case is made

out to condone a long delay of four years and 72 days at this juncture and, therefore, this application fails. The same is hereby rejected.

(R.S.MOHITE,J.) (B.H.MARLAPALLE,J.)